IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.3100 of 1998

Smt. Usha Anil Pasari — Petitioner
Vs.
1. Rajendra Ramdas Chhapwale
2. The State of Maharashtra — Respondents

Mrs.Revati Mohite-Dere for petitioner.Mr.Sparnaraj Dhotre i/b M/s. Mahimtura & Co. for resp.no.1.
Mr.Y.S.Shinde, APP for State.

CORAM: B.H.MARLAPALLE,J.

January 11, 2007.

ORAL JUDGMENT :

1. This is an application filed under Section 482 of Cr.P.C. praying for quashing the order of process issued by the learned Metropolitan Magistrate, 40th Court, Girgaum, Mumbai in Criminal Complaint No.19/S/1997 and having failed to succeed before the learned Metropolitan Magistrate in an application for the said purpose. The application filed by the applicant-accused was rejected on 17/11/1997 by the trial Court.

2. The admitted facts briefly stated are, the applicant-accused owned a land admeasuring 1 H. 6 R. in village Tungarli, Taluka Maval, Dist. Pune and by an agreement for sale she agreed to sell the said land to the respondent no.1 for a consideration of

Rs.1,85,000/-. She gave her power of attorney in favour of the respondent no.1 on 24/11/1987 in respect of the said land. An amount of Rs.1,75,000/- was paid as earnest money and further amount of Rs.5000/- was paid within eight days from the agreement for sale. The payment of the last instalment was subject to the execution of sale deed which was to be done on receiving certificate under Section 230A of the Income Tax Act. However, the sale deed was never executed till the Land Acquisition Officer issued a declaration under Section 6 of the Land Acquisition Act read with Section 126(4) of the MRTP Act. Obviously the subject land was part of the municipal area of Lonavala. The said declaration was issued on 20/2/1993 and a supplementary notification was issued on 4/3/1993. It was published in one of the local newspapers "Sandhya" on 1/3/1993 and Daily Pimpri Chinchwad Samachar on 3/3/1993. The Land Acquisition Officer passed his award on 16/3/1995. The land under acquisition was from Survey No. 57/2 (Part) admeasuring 42 R. and Survey No.57/1 (Part) admesuring 29 R. Thus out of the total area of 1 H. 6 R., 71 R. land was under acquisition i.e. about 70 percent of the land covered by the agreement

itself. The applicant - accused collected / received an amount of Rs.12,64,760/- from the Land Acquisition Officer on or about 30/5/1995. The respondent no.1 approached this Court in Writ Petition No.3801 of 1996 and challenged the land acquisition proceedings. The petition was dismissed on 16/10/1996 and SLP (Civil) No.21264 of 1996 also came to be dismissed on 8/11/1996. The applicant-accused on the other hand filed Special Civil Suit No.867 of 1996 before the competent Court at Pune on or about 11th June 1996 and prayed for a declaration that the purported sale deed signed on 20th January 1995 be declared as illegal, void and not binding on the plaintiff and further prayed that the present respondent no.1 be restrained from received any amount as and by way of compensation in respect of the suit property. The respondent no.1 filed a criminal complaint for an offence punishable under Section 420 of IPC before the Metropolitan Magistrate and it came to be registered as C.C. No.19/S/1997. Order of process was issued and the accused appeared before the trial Court and filed an application for recall of the process. This application was opposed by the respondent no.1 - complainant by filing his say on 7/11/1997. Consequently the application came to be

rejected by the trial Court on 17/11/1997. In his complaint the respondent no.1 stated before the trial Court that the deed of conveyance in respect of the suit property was signed on 20th January 1995 at Mumbai and by the said deed the accused conveyed and transferred all her right, title and interest in the entire property i.e. agricultural land admeasuring 1 H. 6 R. He further submitted that the deed of conveyance was registered on 29/8/1996 with the Sub-Registrar of Assurances at Maval under Registration No.3818 of 1996 i.e. after about more than one year and seven months and inspite of the property having been sold and transferred in his favour by the applicant, she was guilty of cheating in as much as she received the part of the compensation amount of Rs.12,64,760/-.

3. The order passed by the trial Court on 17/11/1997 rejecting the applicant's application for recall of the process order is as cryptic as it could be and reads as under :

> "Heard both sides. Perused the applicant and say. The fact that accused withdrew the compensation amount at the tune of

Rs.12,00,000/- from the acquisition authority though she was knowing that she had sold this property to the complainant, itself amount to cheating. Hence order."

4. The only issue that is required to be considered in this application is whether prima facie case is made out by the complainant in his complaint before the Metropolitan Magistrate and the said complaint could have been entertained by the said Court.

5. There is no dispute that the name of the applicant continued on the revenue record all along in respect of the land covered by the acquisition proceedings and the award finally passed on 16th March 1995. She had received notices in respect of the said proceedings and in response to the same she collected an amount of Rs.12,64,760/-. Two different awards have been passed by the Land Acquisition Officer, the first in respect of the land admeasuring 42 Rs. and the second in respect of the land admeasuring 29 Rs. The applicant has received the amount from the first award and she was not in receipt of the award from the second award. The Land

Acquisition Officer paid the amount to her and surely the amount would not have been paid to her if she was not registered as the owner on the revenue record. It is not the case of the complainant in the complaint that she posed herself as the agent of the complainant or his attorney. In addition the complainant did not disclose that the applicant had already filed Special Civil Suit No.867 of 1996 and prayed for a declaration that the deed of conveyance dated 20th January 1995 was illegal, void and not binding on her. It is also interesting to note that the deed of conveyance under challenge and purportedly signed on 20/1/1995 and registered on 29/8/1996 was signed by the respondent no.1 on behalf of the owner as well as the buyer. He claimed that he was appointed as the power of attorney by the applicant and on the basis of the said authority he signed the sale deed for himself as the beneficiary i.e. the purchaser. This is not disclosed in the complaint and, on the contrary, the complaint makes out a case that the accused and complainant signed the deed of conveyance in his house at Mumbai and it was subsequently registered on 29/8/1996.

6. If the complainant claimed his absolute and

undisputed ownership on the land acquired and if he wanted to exercise his right to receive the compensation amount, the remedy for him was to file an application under Section 30 of the Land Acquisition Act, 1894. The said section clearly provides that if any dispute arises as to the apportionment of the compensation amount or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. All the dispute between the parties was of civil nature viz. right to receive compensation amount of Rs.12 lakhs pursuant to the two different awards passed by the Land Acquisition Officer at Pune. The learned Judge of the trial Court did not apply his mind to this vital issue and in fact the complaint by itself substantially made out the case of a civil dispute.

7. There is one more facet which the trial Court did not address to itself. The complaint was in respect of the property located in Pune district and within the municipal limits of Lonawala. The conveyance was registered purportedly on 29/8/1996 with the Sub-Registrar, Maval, Dist. Pune and the compensation amount was received by the accused from

the Land Acquisition Officer at Pune. The complaint was filed solely on the basis that the initial agreement for sale as well as the deed of conveyance was signed at Mumbai in the house of the complainant. That itself will not empower the learned Metropolitan Magistrate to entertain the complaint filed by the respondent no.1. The complaint ought to have been presented before the competent Court in Maval Taluka.

8. It is also to be noted that when the agreement for sale was signed in November 1987, neither of the parties had any inclination or knowledge that the land was to be acquired for any public purpose. The first notification for acquisition of the land has been issued on 20/2/1993 i.e. almost after more than five years from the date of the agreement for sale. No steps were taken by the complainant to get the property transferred in his name on the revenue record. The power of attorney which he relies upon had also authorised him to apply and obtain a certificate under Section 230A of the Income Tax Act which was necessary for registration of the sale deed. When the suit was filed by the applicant for a declaration that the sale deed dated 25/1/1995 was illegal, the title of the petitioner to the said land

came under challenge and the complaint filed before the learned Metropolitan Magistrate was after the suit was filed.

9. In the premises this application succeeds and the same is hereby allowed. The process issued against the petitioner in C.C. No.19/S/1997 by the learned Metropolitan Magistrate, 40th Court, Girgaum, Mumbai is hereby quashed and set aside. Rule is made absolute accordingly.

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